

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

In the Matter of CADILLAC INSURANCE COMPANY,
IN LIQUIDATION

BILL SCHUETTE, Attorney General
of the State of Michigan, ex rel
ANN E. FLOOD, Director of the
Department of Insurance and Financial Services
of the State of Michigan,

File No.: 89-64126-CR

Hon. William E. Collette

Petitioners,

vs.

CADILLAC INSURANCE COMPANY,
a Michigan Corporation,

Respondent.

MARK J. ZAUSMER (P31721)
Special Assistant Attorney General
AMY SITNER APPLIN (P46900)
ZAUSMER, KAUFMAN, AUGUST
& CALDWELL, P.C.
Attorneys for Petitioners
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

LIQUIDATOR'S VERIFIED PETITION FOR APPROVAL OF
LIQUIDATOR'S DECISION PERTAINING TO
TREATMENT OF REMAINING ASSETS

Ann E. Flood, Director of the Department of Insurance and Financial Services, in her capacity as Receiver/Liquidator of Cadillac Insurance Company ("Cadillac"), through her attorneys, ZAUSMER, KAUFMAN, AUGUST & CALDWELL, P.C., and consistent with former Chapter 78

of the Michigan Insurance Code of 1956, asks the Court to enter an Order Granting Liquidator's Verified Petition for Approval of Liquidator's Decision Pertaining to Treatment of Remaining Assets. In support of this Verified Petition, the Liquidator states as follows:

HEARING

1. This Verified Petition is scheduled for hearing on February 12, 2014, at 10:00 a.m., or as soon thereafter as counsel may be heard.

PRIOR HISTORY PERTAINING TO DISTRIBUTION OF ASSETS

2. On July 5, 2011, the Liquidator filed a Petition for Approval of Plan of Interim Distribution of Estate Assets (the "Interim Distribution Petition"), which sought court approval of the Liquidator's valuation of claims and plan for distribution of receivership assets.¹

3. As requested in the Interim Distribution Petition, which was granted by order dated August 3, 2011, the Liquidator made an interim distribution of assets in the amount of \$17,490,128.00 consisting of the following:

- Full and final payment of incurred and reserved guaranty fund administrative expenses in the amount of \$2,709,323.00.²
- A partial pro rata distribution of \$14,780,805.00 to preferred claimants under MCL 500.7834 ("Class 1 Claims"), which includes claims of policyholders, policy claimants and guaranty associations, amounting to fifty percent (50%) of their approved claim amounts.

4. The Liquidator subsequently, on April 22, 2013, filed a Petition for Order Approving Plan for Final Distribution of Estate Assets, Including Partial Distribution of Estate Assets, Final Disallowance of Class 2 Claims, Establishment of Administrative Reserve for Wind-Up Expenses

¹ The Interim Distribution Petition explains the applicability of former Chapter 78 of the Insurance Code, MCL 500.7800, et seq., to this matter and attaches a copy of Chapter 78. The Interim Distribution Petition and the other petitions discussed in this Petition can be accessed online at the following address: http://www.michigan.gov/difs/0,5269,7-303-13251_58792---,00.html.

² This was in addition to prior interim distributions of assets to reimburse administrative expenses of state guaranty funds incurred in paying covered claims of Cadillac insureds, totaling \$9,158,630.41.

and for Related Relief and Annual Narrative and Financial Report to Receivership Court (the “Distribution Plan Petition”).

5. The Distribution Plan Petition sought approval for an additional distribution of \$13,626,257.36 to Class 1 claimants – resulting in an overall recovery for Class 1 claimants of 96.1% of their approved claims

6. In addition, because there were insufficient assets to pay all Class 1 claims in full, the Liquidator sought denial of all Class 2 claims.³

7. As noted in the Distribution Plan Petition at ¶ 12 and Exhibit D, the Liquidator reserved an amount (approximately \$704,000) to pay for administrative and case closure costs to be incurred after the distribution of the bulk of accumulated assets.

8. This Court granted the Distribution Plan Petition on June 5, 2013. Distributions were made by the Liquidator consistent with the resulting order.

PROPOSED TREATMENT OF REMAINING ASSETS

9. As set forth above, in the Distribution Plan Petition, the Liquidator reserved certain funds (the “Reserved Funds”) in order to pay the expenses of wind up, including but not limited to expenses for receivership activity, accounting, tax preparation, legal, document destruction, termination of the receivership, salary, and severance pay.

10. On October 23, 2013, the Liquidator filed a Verified Petition for Finding of Compliance with Prior Court Orders, Order Approving Further Plans for Closure of the Estate and Related Relief (the “Closure Plan Petition”).

³ As explained in the Distribution Plan Petition, the 96.1% payment to Class 1 claimants left unpaid 3.9% of approved Class 1 claims, which was equal to approximately \$1.15 million. Because Estate assets following the distribution would be significantly less than \$1.15 million, it was impossible that a distribution to Class 2 claimants could ever be made.

11. In the Closure Plan Petition, the Liquidator described the anticipated activities related to closure, including but not limited to the activities related to closing the receivership office, such as boxing and storage or destruction (consistent with Court Order) of estate records, termination of the office lease, insurance coverages, payroll services, prepayment of professional expenses, release of staff, etc.

12. The Closure Plan Petition addressed the disposition of any portion of the Reserved Funds remaining after closure activities were complete as follows:

[T]he Liquidator will address with the Court the disposition of any funds anticipated to be remaining in the estate at the time the Liquidator is ready to apply for discharge. However, the Liquidator does not anticipate that there will be sufficient funds in the estate to economically justify making an additional distribution. [Closure Plan Petition, ¶ 15.j.]

13. The Liquidator has, since entry of the Order granting the Closure Plan Petition on December 18, 2013, continued the wind up activities of the Cadillac receivership as described in the Closure Plan Petition.

14. The Liquidator currently projects that, after completion of those wind up activities by March 31, 2014, there will remain Reserved Funds in the estimated amount of \$85,000 to \$100,000.

15. The Liquidator has considered the possibility of a supplemental distribution, but as set forth below, the Liquidator has concluded that a supplemental distribution of assets is neither feasible nor prudent. The Liquidator therefore seeks leave of court to simply complete winding up the affairs of the Cadillac receivership and thereafter to irrevocably escheat all remaining funds to the State of Michigan.

16. A supplemental distribution, of whatever amount, will encompass a minimum time period of three months and more likely four to six months. This time period includes, but is not limited to, the time required to prepare the petition for supplemental distribution of assets, conduct the hearing of same, see to entry and implementation of that order, ensure that no appeal is taken

from the order, see to the actual distribution of funds including preparing, mailing and tracking some 400 checks, await an appropriate period to ensure that no checks are returned, stop payment on checks that are not negotiated within a specified period of time, and escheat unclaimed funds to the state.

17. In addition to the minimum three-month time period for making any supplemental distribution, and apart from the amount of any supplemental distribution, additional costs would be incurred during that time by the Liquidator and his staff for various matters, including staff time, postage, stoppage fees on checks, rent,⁴ insurance, other office overhead, and the like. A supplemental distribution would require that the Cadillac receivership remain open at least through June 2014 since a final motion for termination of the receivership and all of the attendant filings associated therewith would, by necessity, follow the completion of any supplemental distribution.

18. Without accounting for a minimum three-month period attributable to a possible supplemental distribution, the Liquidator anticipates final closure of the receivership offices by March 31, 2014, with termination of the estate and final release of the Liquidator by the end of April 2014.

19. However, in order to make a supplemental distribution, another three months of expenses in the approximate amount of \$100,000 to \$150,000 (exclusive of the amount of supplemental distribution) would be required.

20. Consequently, the Liquidator has determined that it is uneconomic to distribute any further funds to creditors. (See MCL 500.7818(2) ("Such receiver shall in no case be permitted to increase the liability of any insurer undergoing liquidation excepting for the purpose of preserving its

⁴ Consistent with the Closure Plan Petition and resulting Order, the Receiver negotiated with the receivership's landlord for a lease end within the first quarter of 2014. The lease is currently scheduled to terminate March 31, 2014. Under the negotiated terms, any month-to-month extension of the lease results in a rental payment equal to double the prior rent under the expired lease.

assets”); see also MCL 500.8146(1)(at such time as the Liquidator applies to the Court for discharge, the court may make any other orders, “including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.”). Although the Liquidator has not yet applied for discharge, the Liquidator seeks approval at this time of his intent not to make a supplemental distribution, but instead to wind up the affairs of Cadillac and to apply for discharge and related relief.

21. After all related final administrative tasks have been completed, the Liquidator will file a final motion to terminate the receivership and discharge the receiver--which the Liquidator currently anticipates filing in late March or early April 2014.

22. Upon the completion of the remaining wind up activities and the discharge of the Receiver, the Liquidator proposes to irrevocably escheat any remaining funds (if any and irrespective of the amount) to the State of Michigan for deposit in the general fund.

NOTICE

23. The Liquidator has served a copy of this Petition upon all persons/entities and/or their counsel who are known to have outstanding or ongoing claims, suits or controversies that affect or that are or may be affected by the Receivership proceeding, consistent with the prior orders of this Court.

24. The Liquidator has or shortly will post a copy of this Petition on the State of Michigan website along with the other Cadillac documents previously posted there.

25. Any objection to the relief requested in this Petition **must be in writing** and must be filed with the Ingham County Circuit Court addressed as follows: Clerk to the Honorable William E. Collette, Ingham County Circuit Court - Mason Courthouse, 341 South Jefferson, Mason, Michigan 48854, and a copy must be properly served via U.S. Mail (First-Class) to the Liquidator’s counsel: Mark J. Zausmer/Amy S. Applin, Zausmer, Kaufman, August & Caldwell, P.C., 31700

Middlebelt Rd, Ste. 150, Farmington Hills, Michigan 48334, or other proper method of service under the Michigan Court Rules. **Written objections must be filed with the Court, and a copy must be received by the Liquidator's counsel not later than 12:00 p.m. on Monday, February 10, 2014.** If written objection is not filed with the Court *and* received by the Liquidator's counsel by 12:00 p.m. on Monday, February 10, 2014, the Liquidator asks that *the objection be completely and forever barred as it relates to the Liquidator's Petition and the relief sought by that Petition.*

VERIFICATION

26. This Petition is verified by James Gerber, the Deputy Liquidator.

RELIEF REQUESTED

WHEREFORE, the Director of the Department of Insurance and Financial Services, acting solely in her capacity as the court-appointed Liquidator of Cadillac Insurance Company, respectfully requests that this Honorable Court:

- a. Grant this Petition;
- b. Approve the Liquidator's proposed treatment of remaining assets;
- c. Grant such other relief as equity warrants.

Respectfully Submitted,

ZAUSMER, KAUFMAN, AUGUST
& CALDWELL, P.C.


MARK J. ZAUSMER (P31721)

AMY S. APPLIN (P46900)

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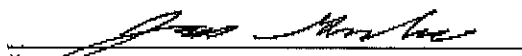
(248) 851-4111

Dated: February 3, 2014

VERIFICATION

STATE OF MICHIGAN)
 ~~IN~~ *ENGLAND*)ss.
COUNTY OF ~~OAKLAND~~)

James Gerber, court-appointed Special Deputy to the statutory Liquidator of Cadillac, being first duly sworn, deposes and says that he makes this Verification on the Liquidator=s behalf; that he has read the Liquidator's Verified Petition for Approval of Liquidator's Decision Pertaining to Treatment of Remaining Assets, and that he executes the Petition for and on behalf of the Liquidator, and is duly authorized to do so; and that the matters contained in the Petition are true to his personal knowledge and/or are true to the best of his information and belief.


James Gerber

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 3rd day of February, 2014.

